STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: DECATUR COUNTY, Petitioner/Public Employer, and PUBLIC, PROFESSIONAL & MAINTENANCE EMPLOYEES, LOCAL 2003, Certified Employee Organization.	)	CASE NO. 5376

RULING ON NEGOTIABILITY DISPUTE

A petition for expedited ruling on negotiability dispute was filed by Decatur County (the County) with the Public Employment Relations Board (PERB or Board) pursuant to PERB rule 621 IAC 6.3(20), in which the County sought a determination as to whether a proposal offered during the course of collective bargaining by Public, Professional & Maintenance Employees, Local 2003 (PPME) is subject to mandatory bargaining under Iowa Code section 20.9.

Oral arguments were presented to the Board on October 9, 1995 by Carlton Salmons, for the County, and Matthew Glasson, for PPME. Following arguments and our consideration of the parties' briefs, we issued a preliminary ruling on the negotiability issue on October 11, 1995. The County subsequently filed a request for a final ruling on the proposal at issue.

Subjects of bargaining are divided into three categories--mandatory subjects on which bargaining is required if requested; permissive subjects on which bargaining is permitted but not required and illegal subjects on which bargaining is precluded by

law. See, e.g., Charles City Community School District v. PERB, 275 N.W.2d 766, 769 (Iowa 1979).

The mandatory subjects of bargaining are set forth in "laundry list" form in Iowa Code section 20.9, which provides, in relevant part:

> The public employer and the employee organization shall meet at reasonable times. . . to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. . . and grievance procedures.

The subjects listed in 20.9 are to be interpreted narrowly and restrictively. Charles City Community School District, supra, 275 N.W.2d at 773.

Our task in deciding negotiability issues is to determine whether a given proposal, on its face, fits within a definitionally fixed section 20.9 mandatory topic. Clinton Police Department Bargaining Unit v. PERB, 397 N.W.2d 764, 766 (Iowa 1986). We do not decide whether the proposal is fair or financially reasonable, but look only at the subject matter and not the relative merits of the proposal at issue. Charles City Community School District, supra, 275 N.W.2d at 769.

The Iowa Supreme Court has prescribed a two-step analysis for identifying mandatorily-negotiable proposals. First, the proposal must fall within the meaning of one of the section 20.9 mandatory subjects. Second, the proposal must not be illegal; that is, there must be no legal prohibitions against bargaining on the particular

topic or against the employer providing such a benefit to its employees. See, e.g., Charles City Education Association v. PERB, 291 N.W.2d 663, 666 (Iowa 1980); Charles City Community School District, supra, 275 N.W.2d at 773.

In determining whether the subject matter of a proposal is within the meaning of one of the mandatory section 20.9 subjects, we are to consider what the proposal, if incorporated into the parties' collective bargaining agreement, would require an employer to do. See, e.g., State v. PERB, 508 N.W.2d 668, 673 (Iowa 1993). Ultimately, in defining the various section 20.9 bargaining subjects, we are involved in an exercise of statutory construction. City of Fort Dodge v. PERB, 275 N.W.2d 393, 396 (Iowa 1979).

The County seeks a ruling as to the negotiability status of the following proposal offered by PPME:

> While on Workers [sic] Compensation leave, all employee benefits will continue to accrue.

I.

A. The County maintains that the proposal at issue is not within the meaning of a section 20.9 mandatory subject and thus fails the first of the two steps in the test for mandatory negotiability, rendering the proposal permissive at best.

The County argues that an employee off work and receiving workers' compensation benefits is on a leave of absence. Characterizing the proposal as one which would require the employer to continue to accrue sick leave, holidays and vacation time for later payment to the employee, it argues that the proposal requires the deferred payment of money for services not rendered and labor

not performed. Citing, *inter alia*, Fort Dodge Community School District v. PERB, 319 N.W.2d 181 (Iowa 1982) and Professional Staff Association v. PERB, 373 N.W.2d 516 (Iowa App. 1985), the County maintains that such payments are not within the section 20.9 subjects "wages" or "supplemental pay".

Even assuming the correctness of the County's assertion that an employee's absence from work under conditions where workers' compensation benefits are payable under Iowa Code ch. 85 constitutes a "leave of absence" within the meaning of section 20.9, we do not believe the holdings of Fort Dodge Community School District or Professional Staff Association dictate the result in this case. While we agree with the County's assertion that the proposal at issue is not mandatorily negotiable as "wages" or "supplemental pay" within the meaning of section 20.9, we do not perceive PPME as advancing those subjects as a basis for the proposal's mandatory negotiability. A given proposal may clearly be outside the scope of certain bargaining subjects, but still be mandatorily negotiable because it is within the scope of others.

If an employee's absence from work under circumstances covered by the workers' compensation statute constitutes a "leave of absence" under section 20.9, as the County maintains, what the proposal at issue would require the County to do, if incorporated into a collective bargaining agreement, is to continue to provide the benefits specified in the collective agreement to the employee during that leave of absence. The predominant characteristic of the proposal is thus the conditions of an employee's leave of

absence--specifically, whether other contractual benefits continue or are suspended during the leave.

"Leaves of absence" is a mandatory subject of bargaining under section 20.9. We think the ordinary and commonly-understood meaning of the subject includes not only a consideration of whether a particular type of leave will exist or not, but also the conditions of the leave, such as whether it is paid or unpaid, the amount of the employees' leave entitlement, the method by which any leave entitlement is bestowed and the conditions under which the employee is permitted to return to work.[1]

Our belief that the continuation or cessation of an employee's entitlement to employment benefits while on a leave of absence logically falls within the section 20.9 subject "leaves of absence" is only strengthened by evidence that the legislature considers the matters to be directly related. For example, in Iowa Code section 55.1, concerning leaves of absence for service in elective offices, the general assembly declared that such leave shall be granted by employers and specified certain conditions which shall apply to the leave, while allowing flexibility as to other conditions.[2] The legislature's consideration of and comment upon the continuation of

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[1]See Marion Independent School District, 78 PERB 1173, in which we held to be mandatorily negotiable under "leaves of absence" a proposal which would have required the employer to maintain for employees returning from approved leaves the same benefits they would have accrued had no leave taken place.

[2]For instance, the section 55.1 leave shall be granted without loss of net credited service or benefits earned, but the leave may be with or without pay, and the employer is not required to (but presumably may) pay pension, health or other benefits to the employee during the leave.

other employee benefits during a leave of absence in the same statutory provision which prescribed the leave itself certainly suggests to us that it considers the conditions of a leave of absence to be part and parcel of the subject.

We conclude that if an employee's absence from work while "on workers' compensation" constitutes a "leave of absence" within the meaning of section 20.9, as the County maintains, the instant proposal, which specifies the conditions of that leave vis-a-vis contractual employee benefits, falls within the meaning of the section 20.9 subject "leaves of absence".

B. Even if an employee's absence from work "while on workers' compensation" is not itself viewed as a leave of absence within the meaning of section 20.9, we nonetheless conclude that the proposal at issue falls within subjects specified as mandatory by that section.

During oral arguments the parties stipulated that the "employee benefits" referred to in the proposal are sick leave, holidays and vacation. Reading the proposal in that light, what it would require the County to do, should it become part of the parties' collective agreement, is to continue to provide contractual sick leave, holiday and vacation benefits to employees who are absent due to circumstances covered by the workers' compensation statute. The conditions under which contractual sick leave, holiday and vacation benefits are accorded to employees is thus the predominant characteristic of the proposal when viewed in this light--one which we view as squarely within the scope of the

section 20.9 subjects "leaves of absence" (i.e., sick leave), "holidays" and "vacations." We think it axiomatic that if "leaves of absence," "holidays" and "vacations" as bargaining topics mean anything at all, they mean that an employer is required to negotiate whether such benefits will be provided, and if so, under what conditions.

Consequently, whether or not an employee's absence from work due to a work-related injury or illness itself constitutes a leave of absence within the meaning of section 20.9, we conclude that the proposal at issue falls within the meaning of at least one of the mandatory subjects of bargaining, and thus satisfies the first prong of the negotiability analysis prescribed for our use by the Iowa Supreme Court.

II.

The second prong of the prescribed negotiability analysis is to determine whether the proposal constitutes an illegal subject of bargaining,[3] one which the County refers to as a "prohibited" topic.

The record reflects that in August, 1994, prior to the bargaining which spawned the instant negotiability dispute, the County's board of supervisors adopted a resolution which provided that the accrual of sick leave benefits will not be allowed while

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[3]Illegal subjects have been variously described by the Iowa Supreme Court. See, e.g, Charles City Community School District v. PERB, 275 N.W.2d at 769; Id. at 773; Charles City Education Association v. PERB, 291 N.W.2d at 666; Saydel Education Association v. PERB, 333 N.W.2d at 487; Waterloo Police Protective Association v. PERB, 497 N.W.2d at 835; State v. PERB, 508 N.W.2d at 672.

an employee is receiving workers' compensation; that employees shall not be paid for holidays while receiving workers' compensation, and that the accrual of vacation time will not be allowed while an employee is receiving workers' compensation.

The County asserts that its resolution, which it characterizes as having been passed under its constitutional (Article III, sec. 39A) and statutory (Iowa Code section 331.301) home rule powers, has specifically disallowed and thus effectively precluded bargaining concerning these matters. The County argues that the proposal at issue thus also fails the second prong of the prescribed negotiability analysis because the County's resolution constitutes a legal prohibition barring negotiations on the matter.

We cannot concur with the theory that the County, by the exercise of its home rule powers, may effectively avoid the duty to bargain mandatory subjects imposed by section 20.9. While we claim no particular expertise in the law concerning county home rule, even a cursory reading of the county home rule amendment and Iowa Code section 331.301, upon which the County relies, reveals that counties are granted and may exercise home rule power and authority only to the extent it is "not inconsistent with the laws of the general assembly."

The County's resolution, to the extent that it purports to supersede or prohibit bargaining on otherwise-mandatory topics, is inconsistent with section 20.9, which is a "law of the general assembly" which we possess the statutory authority to interpret and apply. See Iowa Code section 17A.9. While we recognize that state

law and a city's (and presumably a county's) exercise of home rule power is to be reconciled if possible,[4] we perceive no way to reconcile the County's resolution with the general assembly's express directive that mandatory subjects shall be bargained.

Acceptance of the County's theory would result in a situation where the scope of mandatory bargaining could vary from county to county (or city to city), depending upon which mandatory subjects of bargaining the particular public employer had preempted through its unilateral exercise of its home rule authority. We do not believe that such was the legislature's intent. Had the general assembly intended that individual counties, through the exercise of home rule authority, were to be allowed to avoid the section 20.9 bargaining responsibility which it had imposed upon all public employers in the state, it could have provided as much in either chapter 20 or chapter 331. It did not. Instead, the general assembly took precisely the opposite course by requiring that the exercise of home rule authority be consistent with state law.[5]

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[4]See, e.g., City of Des Moines v. Gruen, 457 N.W.2d 340, 342 (Iowa 1990).

[5]The County seemingly acknowledges that it cannot, by resolution, "trump" the section 20.9 duty to bargain mandatory subjects, but maintains that where a question exists as to a proposal's negotiability status, and the Iowa Supreme Court has not definitively declared the matter to be mandatorily negotiable, the County is free to unilaterally determine and implement its position until the General Assembly declares otherwise. We find no merit in this argument. The General Assembly did "declare otherwise" when it enacted section 20.9 and imposed the duty to bargain. Whether a dispute concerning a similar bargaining proposal has reached the supreme court yet or not is irrelevant. A number of the mandatory subjects listed in section 20.9 have not been discussed by the supreme court, yet they nonetheless constitute mandatory subjects.

The County maintains that since no state statute exists which speaks to the accrual of sick leave, holidays and vacation for employees on workers' compensation, it is free to define its own policies on the matter. The County's argument either misconstrues or overlooks section 20.9.

We conclude that the County's resolution does not constitute a legal prohibition rendering PPME's proposal an illegal subject of bargaining. Having previously concluded that the proposal at issue falls within the meaning of at least one of the Iowa Code section 20.9 mandatory subjects, and no legal prohibition against bargaining on the proposal or against the employer providing the benefits it seeks having been called to our attention, we necessarily conclude that the proposal offered by PPME during the course of the parties' collective bargaining is mandatorily negotiable.

DATED at Des Moines, Iowa this 22nd day of November, 1995.

PUBLIC EMPLOYMENT RELATIONS BOARD

Richard R. Ramsey, Chairman

M. Sue Warner, Board Member

Dave Knock, Board Member